

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL J. HOLMES, ) Case No. CV 18-04435 DDP (JCx)  
)  
Plaintiff, )  
) **ORDER GRANTING DEFENDANT'S MOTION**  
) **TO DISMISS**  
v. )  
)  
KADING BRIGGS, LLP, )  
) [Dkt. 11]  
Defendants. )  
)

Presently before the court is Defendant Kading Briggs, LLP's Motion to Dismiss. Having considered the submissions of the parties, the court GRANTS the motion and adopts the following Order.<sup>1</sup>

**I. Discussion**

Plaintiff's Complaint alleges that in a pending lawsuit against Defendants' clients in Los Angeles Superior Court, Defendants "have continuously provided the Plaintiff objections to the Plaintiffs [sic] discovery request that were not responses given by their client." The Complaint also alleges that Defendants refused to accede to Plaintiff's requests for a change in certain

---

<sup>1</sup> The delay in the filing of this Order resulted from an oversight by the court. But see C.D. Cal. L.R. 83-9.2.

1 deposition dates.<sup>2</sup> The Civil Cover Sheet, filed alongside  
2 Plaintiff's Complaint, indicates a cause of action under 42 C.F.R.  
3 § 93.103, related to Defendants' alleged filing of fabricated  
4 documents in state court. (Dkt. 1-2 at 1.)

5 Defendant now moves to dismiss this case for lack of  
6 jurisdiction. A motion under Rule 12(b)(1) may challenge the  
7 court's jurisdiction facially, based on the legal sufficiency of  
8 the claim, or factually, based on the legal sufficiency of the  
9 jurisdictional facts. White v. Lee, 227 F.3d 1214, 1242 (9th Cir.  
10 2000) (citing 2 James Wm. Moore et al., Moore's Federal Practice  
11 12.30[4], at 12-38 to 12-41 (3d ed.1999)). Where the motion  
12 attacks the complaint on its face, the court considers the  
13 complaint's allegations to be true, and draws all reasonable  
14 inferences in the plaintiff's favor. Doe v. Holy See, 557 F.3d  
15 1066, 1073 (9th Cir. 2009). In a factual challenge, the court is  
16 not required to accept the allegations of the complaint as true and  
17 may consider additional evidence outside of the pleadings. Maya v.  
18 Centex Corp., 658 F.3d 1060, 1067 (9th Cir. 2011). Once the moving  
19 party has presented evidence showing a lack of subject-matter  
20 jurisdiction, the burden shifts to "the party opposing the motion  
21 [to] furnish affidavits or other evidence necessary to satisfy its  
22 burden of establishing subject matter jurisdiction." Safe Air for  
23 Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). If the  
24 plaintiff cannot meet its burden of establishing the jurisdiction  
25 it seeks to invoke, the court must dismiss the case under Rule  
26 12(b)(1).

---

28 <sup>2</sup> The Complaint spans five sentences in its entirety.

1 Plaintiff's Complaint contains no allegations or statements  
2 pertaining to this Court's jurisdiction. Even considering the  
3 information contained in Plaintiff's Civil Cover Sheet, it appears  
4 that this court lacks subject matter jurisdiction. District courts  
5 have diversity jurisdiction over all civil suits where the amount  
6 in controversy "exceeds the sum or value of \$75,000, exclusive of  
7 interest and costs" and there exists complete diversity of  
8 citizenship between the parties. 28 U.S.C. § 1332(a); Caterpillar  
9 Inc., v. Lewis, 519 U.S. 61, 68 (1996). Complete diversity exists  
10 where the parties are citizens of different states. 28 U.S.C. §  
11 1332(a). Here, although Plaintiff's cover sheet does suggest that  
12 the amount in controversy requirement may be met, there is no  
13 indication that Plaintiff seeks to invoke this Court's diversity  
14 jurisdiction, and no information regarding the citizenship of  
15 either party. Rather, Plaintiff indicates that both he and  
16 Defendant are residents of Los Angeles County. Nor does it appear  
17 that Plaintiff could amend his complaint to properly allege  
18 complete diversity. Plaintiff concedes in his Opposition that he  
19 is a citizen of California, and Defendant has established that it,  
20 too, is a California citizen. (Declaration of Glenn Briggs, ¶ 2.)  
21 This Court, therefore, cannot exercise diversity jurisdiction over  
22 this matter.

23 This Court also has jurisdiction to consider "all civil  
24 actions arising under the Constitution, laws, or treaties of the  
25 United States." 28 U.S.C. § 1331. "Under the longstanding  
26 well-pleaded complaint rule, however, a suit arises under federal  
27 law only when the plaintiff's statement of his own cause of action  
28 shows that it is based upon federal law." Vaden v. Discover Bank,

1 556 U.S. 49, 60 (2009) (internal quotation marks, alteration, and  
2 citation omitted). Although Plaintiff's Complaint makes no  
3 reference to any federal law, the civil cover sheet does invoke 42  
4 C.F.R. § 93.103. That regulation, however, simply defines  
5 "research misconduct" for purposes of policy statements pertaining  
6 to the Public Health Service, a part of the Department of Health  
7 and Human Services. Neither Plaintiff's Complaint nor his  
8 Opposition to the instant motion provide any explanation how that  
9 federal regulation is any way pertinent to Plaintiff's allegations  
10 about Defendant's discovery conduct in state court. Because there  
11 is no federal question at issue in this case, this court lacks  
12 subject matter jurisdiction.

13 **II. Conclusion**

14 For the reasons stated above, Defendant's Motion to Dismiss is  
15 GRANTED.

16  
17  
18  
19 IT IS SO ORDERED.  
20  
21  
22  
23  
24

25  
26 Dated: May 11, 2021  
27  
28



DEAN D. PREGERSON  
United States District Judge